

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	05-11524-PBS
ONE COMPAQ MODEL 2100 LAPTOP)	
COMPUTER SERIAL NUMBER CNF43021JP)	
CONTAINING A SUBFOLDER ENTITLED)	
"ANIMAL FARM" AND UNALLOCATED SPACE))	
ON HARD DRIVE CONTAINING PICTURES)	
Defendant.)	

UNITED STATES' MOTION FOR ENTRY OF DEFAULT

The United States of America, by and through its attorney, Michael J. Sullivan, United States Attorney for the District of Massachusetts, hereby requests that a default be entered pursuant to Rule 55(a) of the Federal Rules of Civil Procedure against Eugene John Fitzgerald, and all other persons claiming an interest in the defendant computer and defendant images, described as:

One Compaq Model 2100 Laptop Computer
Serial Number CNF43021JP Containing a
Subfolder Entitled "Animal Farm" and
Unallocated Space On Hard Drive
Containing Pictures

for failure to file an answer or otherwise to defend, as provided for in Rule C of the Supplemental Rules for Certain Admiralty and Maritime Claims. The failure to submit a verified claim justifies the entry of default. See United States v. One-Sixth Share of James J. Bulger In All Present and Future Proceeds of Mass Millions Lottery Ticket No. M246233, 326 F.3d 36, 40-41 (1st Cir. 2003 (failure to file a timely verified claim disqualifies putative

claimant from participating in civil forfeiture action).

In support of this application, the United States submits the attached Affidavit.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ JENNIFER H. ZACKS
JENNIFER H. ZACKS
Assistant U.S. Attorney
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3100

Date: November 10, 2005

SO ORDERED AND ALLOWED

PATTI B. SARIS
United States District Judge

Date: _____

CERTIFICATE OF SERVICE

I, Jennifer H. Zacks, Assistant U.S. Attorney, hereby certify that a true copy of the foregoing Motion for Entry of Default, as well as the Affidavit in Support of Motion for Entry of Default, were served upon Eugene John Fitzgerald, 16 Wadsworth Street, Allston, MA 02134-1822 by first class mail, postage prepaid.

/s/JENNIFER H. ZACKS
Jennifer H. Zacks
Assistant U.S. Attorney

Date: November 10, 2005

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**AFFIDAVIT IN SUPPORT OF UNITED STATES' MOTION
FOR ENTRY OF DEFAULT**

I, Jennifer H. Zacks, state under oath as follows:

1. I am an Assistant United States Attorney. I represent the plaintiff, the United States of America, in this case. This is an action in rem for forfeiture of the defendant property, described as One Compaq Model 2100 Laptop Computer Serial Number CNF43021JP (the "Defendant Computer") Containing a Subfolder Entitled "Animal Farm" and Unallocated Space on Hard Drive Containing Pictures (the "Defendant Images"). Accordingly, this action is governed by the procedures set forth in the Federal Rules of Civil Procedure and in Rule C of the Supplemental Rules for Certain Admiralty and Maritime Claims.

2. As described in the Affidavit of United States Department of Homeland Security, U.S. Immigration and Customs Enforcement Special Agent Edward P. Murphy, filed with the Complaint in this case, the Defendant Images are subject to forfeiture to the United States pursuant to Title 19, United States Code, Section 1305, as

the Defendant Images represent obscene materials prohibited from importation into the United States. Also, the Defendant Computer is subject to forfeiture to the United States pursuant to Title 19, United States Code, Section 1595a, as the Defendant Computer was used to facilitate the illegal importation of the Defendant Images.

3. The Complaint for Forfeiture in Rem was filed on or about July 19, 2005. This Court issued a Warrant and Monition on or about July 25, 2005, directing the United States Department of Homeland Security, U.S. Immigration and Customs Enforcement to give notice to all persons concerned that a Complaint in Rem had been filed, and to arrest and retain the Defendant Computer and Defendant Images in its custody.

4. Publication of the Complaint and Warrant and Monition was made in the Boston Herald on August 24, 2005, August 31, 2005, and September 7, 2005. A copy of the process receipt and return for publication, executed by United States Department of Homeland Security, U.S. Immigration and Customs Enforcement, was filed with this Court on October 21, 2005.

5. Eugene John Fitzgerald ("Fitzgerald"), the passenger carrying the Defendant Computer and Defendant Images, was sent a certified copy of the Complaint and Warrant and Monition, by certified mail on September 27, 2005, at 16 Wadsworth Street, Alston, MA 02134-1822. Fitzgerald did not sign for the certified mail. A copy of the receipt and return for service was filed with this Court on October 21, 2005. Fitzgerald did not file either a

verified claim or answer to the Complaint.

6. Under Supplemental Rule (C)(6), any person asserting an interest in the Defendant Property is required to file a claim within thirty (30) days after process has been executed and an answer within twenty (20) days after the filing of the claim. The expiration date for filing a claim was October 27, 2005.

7. To date, no claims to the Defendant Computer and Defendant Images or answers to the Complaint have been filed and the time for filing such claims and answers has expired.

8. To the best of my knowledge, and upon information and belief, Eugene John Fitzgerald, nor anyone else with an interest in the Defendant Computer and Defendant Images, is in the military service of the United States, is an infant, or is incompetent¹.

Signed under the pains and penalties of perjury this 10th day of November, 2005.

/s/JENNIFER H. ZACKS
Jennifer H. Zacks
Assistant U.S. Attorney

¹The United States was unable to search the databases such as the Department of Defense Manpower Data Center because Eugene John Fitzgerald does not have a Social Security Number.